**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BLACKBIRD TECH LLC d/b/a BLACKBIRD TECHNOLOGIES,
 	
  Plaintiff,
 	
 v.
 	
 NIANTIC, INC.,
 	
  Defendant.
	Case No. _____
	
	 JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies ("Blackbird Technologies") hereby alleges against Defendant Niantic, Inc. ("Niantic"), on personal knowledge as to its own activities and on information and belief as to all other matters, as follows:

THE PARTIES

1. Plaintiff Blackbird Technologies is a Delaware limited liability company with its principal place of business located at 200 Baker Ave., Ste. 203, Concord, MA 01742.

2. Blackbird Technologies works with patent owners to protect their intellectual property. Defending intellectual property rights is usually cost-prohibitive to ordinary individuals and small companies, and a large imbalance exists between these small intellectual property owners and the large technology companies who infringe their patent rights.

3. Niantic is a Delaware corporation. Niantic may be served with process via its registered agent, Incorporating Services, Ltd., 3500 S. DuPont Hwy., Dover, DE 19901.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States of America, Title 35, United States Code §§ 100, *et seq*.

5.   This Court has subject matter jurisdiction over this action per 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (patent jurisdiction).

6.   This Court has personal jurisdiction over Niantic. This Court has at least general jurisdiction over Niantic because Niantic is incorporated in the State of Delaware.

7.   Venue is proper in this District pursuant to 28 U.S.C. § 1400(b) at least because Niantic is incorporated in the State of Delaware.

<div align="center">THE PATENT-IN-SUIT</div>

8.   U.S. Patent No. 9,802,127 (the "'127 patent") entitled, "Video Game Including User Determined Location Information," was duly and legally issued by the U.S. Patent and Trademark Office on October 31, 2017. Blackbird Technologies is the owner by assignment of all right, title, and interest in and to the '127 patent, including all right to recover for any and all infringement thereof. The '127 patent is valid and enforceable. A true and correct copy of the '127 patent is attached as Exhibit A.

<div align="center">COUNT I – INFRINGEMENT OF THE '127 PATENT</div>

A.   DIRECT INFRINGEMENT BY NIANTIC AND USERS

9.   Blackbird Technologies reasserts and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

10.   Niantic developed and published, and continues to develop and publish, a location-based, augmented-reality video game called "Pokémon Go." Pokémon Go was released in the United States on or about July 6, 2016.

11.   Pokémon Go is available for devices (such as smartphones) running Android and iOS operating systems. Niantic published an update, dated December 8, 2017, on the nianticlabs.com website stating that the current version of Pokémon Go for devices running

Android operating systems is version 0.85.2, and that the current version of Pokémon Go for devices running iOS operating systems is version 1.55.1.

12.   Users of Pokémon Go include at least numerous individuals who download and play Pokémon Go on their smartphones as well as Niantic itself, which at least tests Pokémon Go gameplay on smartphones.

13.   Users of Pokémon Go directly infringed, and continue to directly infringe, claims 1-24 of the '127 Patent.

14.   For example, claim 1 of the '127 Patent recites:

1. [1pre] A computer-implemented method comprising:

[1a] receiving a first position indicator representing a first current physical location for a user of a video game, wherein said first position indicator is determined at least in part by taking a global navigation satellite system reading of said first current physical location;

[1b] obtaining image data relating to said first current physical location, said image data comprising two or more camera images of said first current physical location;

[1c] mapping said image data into a virtual environment of said video game by displaying said image data as a video, wherein said user experiences within said virtual environment real life objects from said first current physical location, and said user simultaneously encounters within said virtual environment virtual objects that are not physically present in said first current physical location;

[1d] receiving a second position indicator representing a second current physical location for said user as said user navigates a geographic area surrounding said first current physical location;

[1e] saving at least said second position indicator to a memory; and

[1f] storing at least said second position indicator in said memory when said video game is not executing.

15.   Regarding claim element [1pre]: As a video game application that executes on a computerized device, such as a smartphone, Pokémon Go is a computer-implemented method.

16.   Regarding claim element [1a]: Users of Pokémon Go navigate geographic areas, such as cities, during gameplay. The Pokémon Go video game application receives a first position indicator indicating the current physical location of the user. The first position indicator is determined at least in part by taking a global navigation satellite system reading, such as a global positioning system ("GPS") reading. Niantic explains, for instance:

> The [Pokémon Go] App is a location based game. We [*i.e.*, Niantic] collect and store information about your (or your authorized child's) [*i.e.*, users'] location when you (or your authorized child) use our App and take game actions that use the location services made available through your (or your authorized child's) device's mobile operating system, which makes use of cell/mobile tower triangulation, wifi triangulation, and/or GPS.

(Source: https://www.nianticlabs.com/privacy/pokemongo/en/ (last visited Dec. 12, 2017)).

17.   Regarding claim element [1b]: The Pokémon Go video game application obtains image data of the user's current surroundings from the camera on the user's smartphone.

18.   Regarding claim element [1c]: The Pokémon Go video game application maps the image data obtained from the camera on the user's smartphone into the video game's virtual environment and displays that data as video. The video game's virtual environment includes real life objects from the user's current physical location (*e.g.*, city streets) and also virtual objects such as fictional creatures (*e.g.*, Pokémon). Niantic's website shows, for instance:

[see next page]
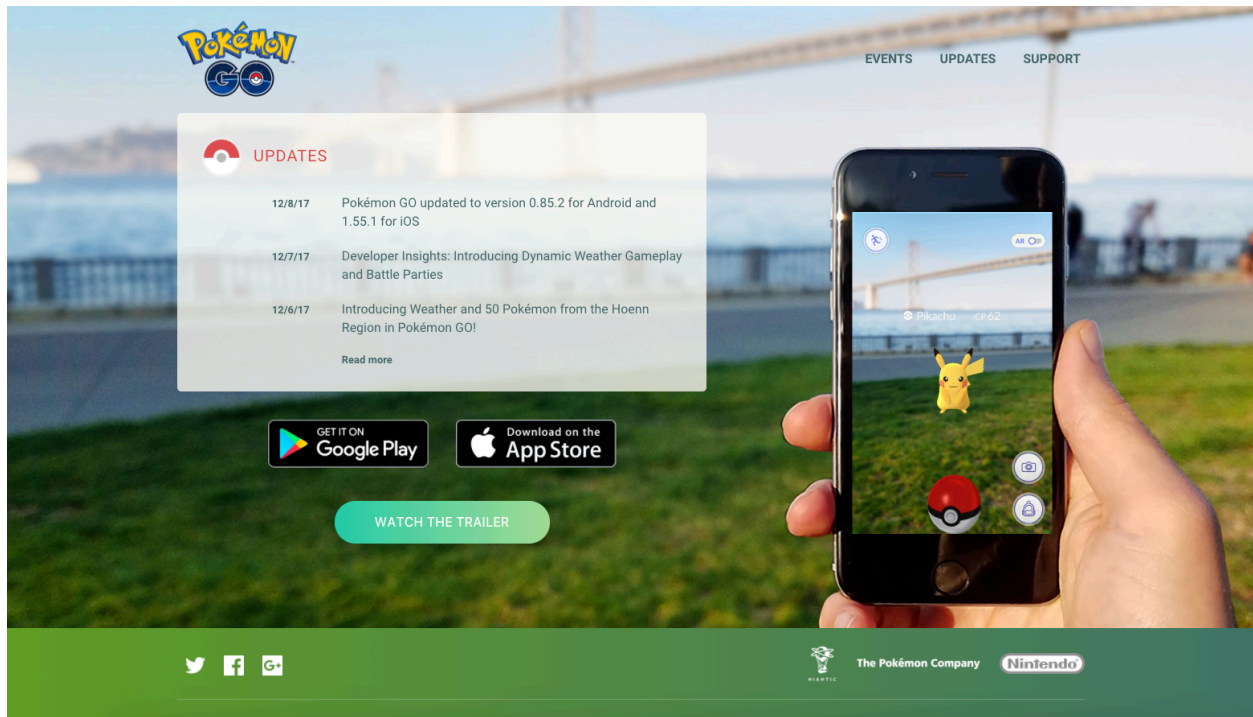
(Source: https://pokemongo.nianticlabs.com/en (last visited Dec. 12, 2017)).

19.   Regarding claim element [1d]: As mentioned above, users of Pokémon Go navigate geographic areas during gameplay. As they do, the Pokémon Go video game application continues to receive position indicators indicating the user's current physical location.

20.   Regarding claim elements [1e] and [1f]: The Pokémon Go video game application saves and stores at least some of the position indicators to a memory, such as the memory on the user's smartphone. For instance, the Pokémon Go video game application saves and stores across execution instantiations the real-life geographic locations at which users encountered and caught various Pokémon. As Niantic explains:

> You understand and agree that by using our App you (or your authorized child) will be transmitting your (or your authorized child's) device location to us and some of that location information, along with your (or your authorized child's) user name, may be shared through the App. For example, when you take certain actions during gameplay, your (or your authorized child's) user name and location may be shared through the App with other users who are playing the game. We may also use location information to improve and personalize our Services for you (or your authorized child).

(Source: https://www.nianticlabs.com/privacy/pokemongo/en/ (last visited Dec. 12, 2017)).

B.   NIANTIC'S INDIRECT INFRINGEMENT

21.   Blackbird Technologies reasserts and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

22.   At least as of the filing date of this Complaint, Niantic also indirectly infringes claims 1-24 of the '127 patent.

23.   Niantic has become aware of the '127 patent through at least the filing of this Complaint.

B.1.   NIANTIC'S ACTIVE INDUCEMENT OF USERS' DIRECT INFRINGEMENT

24.   Niantic actively induces direct infringement of claims 1-24 of the '127 patent by, for example, individual users who download and play the Pokémon Go video game application.

25.   As set forth above in Paragraphs 13-20, individuals who download and play the Pokémon Go video game application directly infringe claims 1-24 of the '127 patent. Niantic therefore knows that such individuals' use of the Pokémon Go videogame application infringes such claims of the '127 patent.

26.   Upon information and belief, Niantic specifically intends to encourage users' direct infringement. Active steps taken by Niantic to encourage users' direct infringement include, but are not limited to, advertising, recommending, and instructing users how to engage in infringing uses of the Pokémon Go video game application. Examples of such advertising, recommendation, and instruction by Niantic include, but are not limited to:

> a.   Niantic's website for Pokémon Go, particularly the "support" portion of that website (*see, e.g.*, https://support.pokemongo.nianticlabs.com/hc/en-us, last visited Dec. 12, 2017);
>
> b.   Niantic's advertisements and descriptions for Pokémon Go on digital distribution platforms commonly known as "app stores," such as Google Play and the Apple App Store;

c. Niantic's in-game "tips" and "news" in Pokémon Go, informing and instructing users how to play;

d. Niantic's billboard campaign (*see* https://www.nianticlabs.com/blog/wk/, last visited Dec. 12, 2017); and

e. Niantic's YouTube channel for Pokémon Go, including the video, "Discover Pokémon in the Real World with Pokémon GO!" (https://www.youtube.com/watch?v=2sj2iQyBTQs, last visited Dec. 12, 2017).

B.2.   NIANTIC'S CONTRIBUTORY INFRINGEMENT

27. Niantic also contributes to the infringement of claim 1-24 of the '127 patent by, for example, individual users who download and play the Pokémon Go video game application.

28. As set forth above in Paragraphs 13-20, individuals who download and play the Pokémon Go video game application on their smartphones directly infringe claims 1-24 of the '127 patent. Niantic therefore knows that the Pokémon Go videogame application, which Niantic provides to individual users for use on their smartphones, is designed for combination with users' smartphones, and that this combination is both patented and infringing.

29. The Pokémon Go videogame has no substantial non-infringing uses.

30. The Pokémon Go video game is a material part of the combination. For example, claim 9 of the '127 patent requires "[a] non-transitory, machine-readable storage medium having stored thereon a computer program for a video game including local content, the computer program comprising a set instructions for causing a machine to perform the steps" outlined above in Paragraphs 13-20. The computer program (*i.e.*, the Pokémon Go videogame application) is a material part of the invention since the only part of the invention not provided by Niantic is a non-transitory, machine-readable storage medium.

<div align="center">DAMAGES</div>

31.   Blackbird Technologies has sustained damages as a direct and proximate result of Niantic's infringement of the '127 patent.

32.   As a consequence of Niantic's past infringement of the '127 patent, Blackbird Technologies is entitled to the recovery of past damages in the form of, at a minimum, a reasonable royalty.

33.   As a consequence of Niantic's continued and future infringement of the '127 patent, Blackbird Technologies is entitled to royalties for Niantic's infringement of the '127 patent on a going-forward basis.

<div align="center">PRAYER FOR RELIEF</div>

WHEREFORE, Blackbird Technologies respectfully requests that this Court enter judgment against Defendant, as follows:

A.   Adjudging that Defendant has infringed the '127 patent, in violation of 35 U.S.C. § 271;

B.   An award of damages to be paid by Defendant adequate to compensate Blackbird Technologies for Defendant's past infringement and any continuing or future infringement up until the date such judgment is entered, and in no event less than a reasonable royalty, including interest, costs, and disbursements pursuant to 35 U.S.C. § 284 and, if necessary to adequately compensate Blackbird Technologies for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;

C.   Ordering Defendant to continue to pay royalties to Blackbird Technologies for infringement of the '127 patent on a going-forward basis;

D.   Awarding that this case be exceptional under 35 U.S.C. § 285 and awarding costs, expenses, and attorneys' fees to Blackbird Technologies;

E.   Awarding Blackbird Technologies pre-judgment and post-judgment interest at the maximum rate permitted by law on its damages; and

F.   Granting Blackbird Technologies such further relief as this Court deems just and proper under the circumstances.

<div align="center">DEMAND FOR JURY TRIAL</div>

Blackbird Technologies demands a trial by jury on all claims and issues so triable.

Dated: December 15, 2017   STAMOULIS & WEINBLATT LLC

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